

April 26, 1945.

Mr. Chester H. Smith
Secretary-Treasurer
Arizona State Board of
Examiners in the Basic Sciences
University of Arizona
Tucson, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Sir:

This is in reply to your letter of April 2, 1945, requesting our interpretation of Chapter 63 of the Laws of 1945, amending Section 67-207 of the Code of 1939, relating to "reciprocity" in the Basic Science examinations. We quote from your letter:

"The Board has directed me to say that it has considered very carefully all of the questions herein-after set forth, and that it has, subject to your opinion reached tentative conclusions on each question. It has directed me further to give you the reasons for each of its conclusions, not with any idea of influencing your decisions or opinions but for the purpose of helping you to see the entire problem facing the Board."

You then submitted the following questions:

"QUESTION #1. Is the reciprocity provided for in the amendment limited to applicants who have "certification, registration, or license" from another state of the District of Columbia which has a Basic Science law?"

"QUESTION #2. (a) Does the expression, "the date of issuance of his license" used in the amendment have reference to the date on which the applicant was issued a license by another jurisdiction? and (b) does the expression "shall be deemed by the Board to be equivalent to those of Arizona" mean equivalent to those in Arizona at the time the amendment becomes effective?"

"QUESTION #3. May the Board grant reciprocity to an applicant who, without examination in the basic sciences, has been issued a certificate by a Basic Science Board of another jurisdiction?"

"QUESTION #4. May the Board under the reciprocity amendment, grant reciprocity to a certificate holder from another jurisdiction when that certificate has been granted upon the successful passing of examinations in less than the six subjects defined in the statute as basic sciences, to-wit: gross anatomy, physiology, pathology, chemistry, bacteriology and hygiene?"

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"QUESTION #5. Does the expression "at the discretion of the board" mean more than a sound discretion to carry out and make effective the purpose of the Basic Science law according to its terms?"

The amendment of 1945, Section 67-207 (b), reads as follows:

"An applicant, a citizen of the United States, furnishing satisfactory proof of a certification, registration, or license issued to such applicant within any state or territory of the United States in which the requirements for the registration of said applicant at the date of issuance of his license shall be deemed by the board to be equivalent to those of Arizona, shall be eligible for registration by reciprocal endorsement at the discretion of the board, upon payment of the registration fee prescribed in section 67-206."

The language of the amendment is somewhat ambiguous and therefore is susceptible to diverse interpretations. You submitted five questions, but they all lead to one fundamental query: "Shall reciprocal registration be granted only to applicants from other states whose Basic Science requirements are identical with those of Arizona?"

The ultimate answer to this main question will be determined by the standard of construction one gives this statute. We should recall that the amendment to the Basic Science law was intended to remedy the present acute shortage of physicians in Arizona. Owing to war conditions, very few new physicians can be admitted in this state, and only through a reciprocal agreement with other states the shortage of physicians may be supplied.

Our Supreme Court has at various times enumerated rules of statutory construction to which we shall adhere in this opinion.

In the case of State v. Commercial Credit Company, 35 Ariz. 479, the court, on page 485, among other things, said that:

"If the language (of the statute) is ambiguous, the court should consider the purpose of the statute and the evil it is intended to remedy."

We should recall that there are two classes of physicians in this state. The largest is the group who were granted certificates of Basic Science in 1936, without examination; the second group consists of physicians who took the examination since 1936. Basic Science laws are of relatively recent origin. The eighteen states who have

adopted it also granted their physicians certificates without examination at the time their respective Basic Science laws were enacted. The qualifications of this class of physicians in Arizona, and in other Basic Science states, are therefore equal.

We are therefore of the opinion that in so far as concerns this class of physicians, reciprocity should be granted without requiring an examination.

The next important question is the application of the law with regard to doctors who were required to take Basic Science examinations in other states. The record shows that only three states in the Union have requirements identical with Arizona relating to an examination in gross anatomy, physiology, pathology, chemistry, bacteriology and hygiene. These states are Michigan, Iowa and Nebraska, and even in these three states the passing grades are different. Twelve other states require an examination in only five of the subjects above enumerated, and two states only in four of them.

In Arizona, under the provisions of the amendment of 1945, an applicant who has failed in one or two subjects only may be permitted to be re-examined on those subjects in which he failed without requiring him to take over the whole examination.

Based upon a reasonable interpretation of the amendment, we are of the opinion that applicants from other states whose certificates of Basic Science were granted on an examination of only four or five of the subjects required by Arizona should be accorded reciprocity privileges pro tanto, upon condition however that such applicants be examined on the subject or subjects which were not included in the examination given in their home states.

To illustrate: Suppose a man from the State of Colorado received his certificate upon the examination of all the subjects required in Arizona except, say, hygiene; such applicant should be given credit for the five subjects except hygiene, and if he passes the required examination on this subject, he should then be granted a full reciprocity certificate to practice medicine in this state.

We are aware that our construction of the law conflicts with yours. While we have a great respect for your opinion, we cannot agree with it, because the acceptance of your interpretation would result in a virtual nullification of the reciprocity amendment.

Reciprocity means mutual exchange of favors. A judicial definition of reciprocity is given in the case of *State ex rel Attorney General v. Fidelity & Cas. Ins. Co.*, 31 N.E. 658; *Metropolitan Life Ins. Co. v. Boys*, 129 N.E. 724:

"Reciprocity means mutuality; an interchange of favors between persons or nations."

The favors exchanged need not be equal in every respect. It suffices if the things exchanged are of substantially the same quality, weight or caliber.

We are familiar with the opinion of the Attorney General of Michigan, who recently held that the State of Michigan could not reciprocate with the Iowa Basic Science Board because the passing grade in Iowa was only seventy, whereas in Michigan the law required a passing grade of seventy-five in each subject.

The Michigan law is very clear and definite and much stricter than the Arizona law, and no doubt the opinion of the Attorney General of Michigan was consistent with his own state law, but we cannot accept such an opinion as a precedent, for our Arizona law is much more liberal than the Michigan law.

For all of the above reasons, we are of the opinion that the letter and spirit of the reciprocity law will be upheld if the certificates be given on the following basis:

- A. That reciprocity be granted only to states which have Basic Science laws.
- B. Physicians' certificates, granted by other states without examination at the time the Basic Science laws were enacted in such states, should be recognized as equal to the certificate of Arizona physicians which were also granted without examination, in 1936, when our law was enacted
- C. Basic Science certificates granted in states where examination requirements are lower than ours should be accorded reciprocity to the extent that they are equal to ours, and the holder thereof should be required to take an examination only in such subjects as he was not examined in his home state.

Answering your question regarding the extent of the Board's discretion, we say that such discretion should not be arbitrary, but should be exercised with the object in view of giving force and effect to every provision of the statute. Aside from the evaluation of the scientific attainments of the applicants, the Board is required also to investigate their moral qualifications, their background and all other facts and circumstances so as to determine the fitness of such persons to practice medicine in Arizona.

Respectfully submitted,

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